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**Leon James, DDS d/b/a Serenity Dental Spa, P.A. and
Adeyinka Anyaegbu.** Cases 16–CA–123727 and
16–CA–127480

June 12, 2015

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS MISCIMARRA
AND HIROZAWA

The General Counsel seeks a default judgment in this case pursuant to the terms of an informal settlement agreement. Upon charges and an amended charge filed by Adeyinka Anyaegbu between March 4, 2014, and April 28, 2014, the General Counsel issued the consolidated complaint on June 27, 2014, against Leon James, DDS d/b/a Serenity Dental Spa, P.A. (the Respondent). The consolidated complaint alleges that the Respondent violated Section 8(a)(1) of the Act by discharging Anyaegbu for her protected concerted activities and by maintaining rules forbidding discussion of wages and “controversial subjects.” The Respondent filed an answer to the consolidated complaint on July 10, 2014.

Subsequently, the Respondent and Anyaegbu entered into an informal settlement agreement, which was approved by the Regional Director for Region 16 on September 17, 2014. Among other things, the settlement agreement required the Respondent to (1) pay \$19,000 in backpay to Anyaegbu within 30 days, (2) remove from its files all references to her discharge, and notify Anyaegbu that this has been done and that the discharge will not be used against her in any way,¹ (3) rescind the above described handbook rules, and (4) email to its employees a copy of the notice to employees.

The settlement agreement also contained the following provision:

The Charged Party agrees that in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party, and after 14 days written notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director will reissue the consolidated complaint previously issued on June 27, 2014 in the instant cases. Thereafter, the General Counsel may file a motion for default judgment with the Board on the allegations of the complaint. The Charged Party understands and agrees that the allegations of the aforementioned complaint will be

deemed admitted and its Answer to such complaint will be considered withdrawn. The only issue that may be raised before the Board is whether the Charged Party defaulted on the terms of this Settlement Agreement. The Board may then, without necessity of trial or any other proceeding, find all allegations of the complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party on all issues raised by the pleadings. The Board may then issue an order providing a full remedy for the violations found as is appropriate to remedy such violations. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board order ex parte, after service or attempted service upon Charged Party/Respondent at the last address provided to the General Counsel.

On November 17, 2014, the Region was advised that the Respondent had filed for Chapter 13 Bankruptcy. By letter that same day, the NLRB Contempt, Compliance and Special Litigation Branch provided to the Respondent’s bankruptcy attorney instructions regarding compliance with the nonmonetary provisions of the informal settlement agreement. The letter noted that because of the bankruptcy proceedings, the Agency was not seeking to collect backpay at that time, but that failure to comply with the nonmonetary provisions would result in the General Counsel seeking enforcement of the agreement.

By letter dated January 26, 2015,² the Regional Director informed the Respondent that she had been advised that the Respondent’s bankruptcy petition was dismissed.³ The letter further stated that although the Region had received the Respondent’s email claiming compliance with the notice posting provision, the Respondent had not fully complied with all of the settlement agreement’s provisions. The letter stated that if full compliance was not achieved within 14 days, the Region would reissue the complaint and seek default judgment. The Respondent failed to comply.

Accordingly, pursuant to the terms of the noncompliance provisions of the settlement agreement, on February 10, the Regional Director reissued the consolidated complaint. On February 20, the General Counsel filed a Motion for Default Judgment with the Board. On February 24, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no re-

² All subsequent dates are 2015, unless otherwise indicated.

³ On January 13, 2015, the United States Bankruptcy Court for the Northern District of Texas issued an order dismissing without prejudice the Respondent’s bankruptcy petition.

¹ Anyaegbu waived reinstatement.

sponse. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

According to the uncontroverted allegations in the motion for default judgment, the Respondent has failed to comply with the terms of the settlement agreement by failing to (1) pay Anyaegbu the agreed upon amount, (2) remove from its files all references to Anyaegbu's discharge and notify her that this has been done and that the discharge will not be held against her in any way, (3) demonstrate that it no longer maintains the handbook rules prohibiting discussion of wages and controversial subjects such as working conditions, performance evaluations, unions, discipline, and management, and (4) email to its employees a copy of the notice to employees. Consequently, pursuant to the noncompliance provisions of the settlement agreement set forth above, we find that the Respondent's answer to the original consolidated complaint has been withdrawn and that all of the allegations in the reissued consolidated complaint are true.⁴ Accordingly, we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been owned by Leon James, DDS as a professional association, doing business as Serenity Dental Spa, with offices and places of business in Arlington (Arlington facility) and Duncanville, Texas (Duncanville facility), and has been engaged in the business of operating dental offices providing dental services.

In conducting its operations during the 12-month period ending May 31, 2014, the Respondent derived gross revenues in excess of \$250,000, and purchased and received at its Arlington and Duncanville facilities goods valued in excess of \$5000 from other enterprises including Patterson Dental, Benco Dental, and Henry Schein, located within the State of Texas, each of which other enterprises had received these goods directly from points outside the State of Texas.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and is a health care institution within the meaning of Section 2(14) of the Act.

⁴ See *U-Bee, Ltd.*, 315 NLRB 667 (1994).

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals have been supervisors within the meaning of Section 2(11) and/or agents of the Respondent within the meaning of Section 2(13) of the Act:

Leon James, DDS	-	Owner
Chanerica Easley	-	Chief Operations Officer

About February 10, 2014, the Respondent's employee, Adeyinka Anyaegbu, engaged in concerted activities with other employees for the purposes of mutual aid and protection by raising safety concerns. About February 10, 2014, the Respondent constructively discharged Anyaegbu.

About February 13, 2014, Anyaegbu engaged in concerted activities with other employees for the purposes of mutual aid and protection by testifying at a Texas Workforce Commission on behalf of a terminated employee. About February 13, 2014, the Respondent terminated Anyaegbu.

The Respondent constructively discharged and terminated Anyaegbu because Anyaegbu engaged in the conduct described above, and to discourage employees from engaging in these or other protected concerted activities.

Since about February 1, 2014, the Respondent has maintained the following rules:

(a) Casual discussions should be about neutral topics and should not include controversial subjects, religion, politics, sexual matters, personal problems, or derogatory remarks about other people or patients.

(b) Salaries and wages are a private matter. Conversations between employees regarding this are discouraged in order to prevent unnecessary disputes. Cause for termination will arise if any employees discuss salaries or wages with anyone other than the office manager.

CONCLUSION OF LAW

By the conduct described above, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to take certain affirmative action designed to effectuate the policies of the Act. Specifically, we shall order the Respondent to comply with the unmet terms of the informal settle-

ment agreement approved by the Regional Director for Region 16 on September 17, 2014.

We shall order the Respondent to make Anyaegbu whole by the payment of backpay as provided for in the settlement agreement in the amount of \$19,000, immediately and in full, plus 12-percent interest accrued to the date of payment, as provided for in attachment 1 to the settlement agreement. In addition, we shall order the Respondent to file a report with the Social Security Administration allocating the backpay award to the appropriate calendar quarters. *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB No. 10 (2014). The Respondent shall also remove from its files all references to Anyaegbu's discharge and notify her in writing that this has been done and that the discharge will not be used against her in any way. Further, we shall order the Respondent to rescind the unlawful rules described above and addressed in the settlement agreement. Finally, we shall order the Respondent to email copies of the notice to employees to its employees.

In limiting our affirmative remedies to those enumerated above, we are mindful that the General Counsel is empowered under the default provision of the settlement agreement to seek "a full remedy for the violations found as is appropriate to remedy such violations," including backpay beyond that specified in the agreement.⁵ However, in his Motion for Default Judgment, the General Counsel has not sought such additional remedies and we will not, *sua sponte*, include them.⁶

ORDER

The National Labor Relations Board orders that the Respondent, Leon James, DDS d/b/a Serenity Dental

Spa, P.A., Arlington and Duncanville, Texas, its officers, agents, successors, and assigns, shall take the following affirmative action necessary to effectuate the policies of the Act.

1. Remit \$19,000, plus interest in the manner set forth in the remedy section of this decision, to Region 16 of the National Labor Relations Board to be disbursed to Adeyinka Anyaegbu, in accordance with the terms of the settlement agreement approved by the Regional Director on September 17, 2014.

2. Remove from its files any reference to the unlawful discharge of Anyaegbu and notify Anyaegbu in writing that this has been done and that the discharge will not be used against her in any way.

3. File a report with the Social Security Administration allocating the backpay award to the appropriate calendar quarters.

4. Rescind its rule that prohibits employees from discussing salaries and wages and rule that prohibits employees from discussing controversial subjects such as working conditions, performance evaluations, unions, discipline, and management.

5. Email a copy of the signed notice to all of its employees who have worked at the Arlington and Duncanville, Texas facilities since February 10, 2014.

6. Within 21 days after service by the Region, file with the Regional Director for Region 16 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. June 12, 2015

Mark Gaston Pearce, Chairman

Philip A. Miscimarra, Member

Kent Y. Hirozawa, Member

⁵ As set forth above, the settlement agreement provided that, in case of noncompliance, the Board could "issue an order providing a full remedy for the violations found as is appropriate to remedy such violations."

⁶ See, e.g., *Benchmark Mechanical, Inc.*, 348 NLRB 576 (2006). The General Counsel specifically requested in his motion for default judgment that the Board "issue a Decision containing findings of fact, conclusions of law consistent with the allegations in the Consolidated Complaint against Respondent and that Respondent be ordered to comply with all terms set forth in the conformed Informal Settlement Agreement."

(SEAL)

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT do anything to prevent you from exercising the above rights.

WE WILL NOT stop you from discussing wages.

WE WILL NOT stop you from discussing controversial subjects such as working conditions, performance evaluations, unions, discipline, and talking about management.

YOU HAVE THE RIGHT to freely bring issues, including concerns about treating patients and complaints to us on behalf of yourself and other employees, and WE WILL NOT do anything to interfere with your exercise of that right.

WE WILL NOT fire employees because they exercise their right to bring issues and complaints including concerns about treating patients to us on behalf of themselves and other employees.

WE WILL NOT in any like or related manner interfere with your rights under Section 7 of the Act.

WE WILL pay Adeyinka Anyaegbu, who has waived reinstatement, for the wages and other benefits she lost because we fired her.

WE WILL remove from our files all references to the discharge of Adeyinka Anyaegbu and WE WILL notify her in writing that this has been done and that the discharge will not be used against her in any way.

WE WILL rescind the rule in our handbook that forbids the discussion of wages.

WE WILL rescind the rule in our handbook that forbids the discussion of controversial subjects such as working conditions, performance evaluations, unions, discipline, and talking about management.

LEON JAMES, DDS D/B/A SERENITY
DENTAL SPA, P.A.

The Board's decision can be found at www.nlrb.gov/case/16-CA-123727 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.

